

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 273 of 2022

STATE

vs.

KAUSHIK KOSHAL SINGH

Counsel: Ms. W. Elo with Ms. S. Bibi for the State
Ms. M. Singh with Ms. V. Kirti for the Accused

Date of Hearing: 03rd October 2022

Date of Closing Submission: 04th October 2022

Date of Judgment: 13th October 2022

Date of Sentence: 19th October 2022

SENTENCE

1. Mr. Kaushik Koshal Singh, you stand convicted for one count of Sexual Assault, contrary to Section 210 (1) (a) of the Crimes Act, which carries a maximum sentence of ten years imprisonment and one count of Rape, contrary to Section 207 (1) and (2) (a) and (3) of the Crimes Act, which carries a maximum sentence of life imprisonment.
2. It was proved at the conclusion of the hearing that you touched the Complainant's breasts and genital area while she was sleeping with your younger sister on the mattress. On another occasion, you approached the Complainant while she was changing clothes after

returning from school and then penetrated her vagina with your penis. The Complainant was eleven years old when the first offence occurred in 2020 and twelve years old in 2021. You are the Complainant's biological brother.

3. In this case, the biological brother had incestuously exploited his younger sister for surrogate sexual satisfaction. Sexual exploitation of children within their domestic environment is a social menace. The social enigma of abusing children for sexual gratification needs to address promptly and effectively. Therefore, I find the objective seriousness of the crime extremely high.
4. The primary purpose of this sentence is founded on the principle of deterrence. It is the responsibility of the Court to deter offenders or other persons from committing offences of the same or similar nature and protect the community from offenders of this nature. A harsh and long custodial sentence is inevitable for offences of this nature to demonstrate the gravity of the offence and reflect that civilized society denounces such crimes without any reservation.
5. These two offences are founded on the same series of offences with similar characters. Therefore, I find it appropriate to impose an aggregate sentence pursuant to Section 17 of the Sentencing and Penalties Act.
6. The maximum penalty for Rape is life imprisonment. Gates CJ in Aitcheson v State ([2018] FJSC 29; CAV0012.2018 (2nd of November 2018)) held that the tariff for the Rape of a child is between 11 - 20 years' imprisonment period.
7. The maximum penalty for Sexual Assault is ten years imprisonment. Justice Madigan in State v Epeli Ratabacaca Laca - Sentence [2012] FJHC 1414; HAC252.2011 (the 14th of November 2012), has expounded the tariff for the offence of Sexual Assault as between 2 years to 8 years imprisonment.

8. Rape is a physical invasion committed on the victim under a coercive circumstance. Therefore, the degree of invasion of the victim's bodily integrity and sexual autonomy is an indispensable factor in determining the gravity and impact of the crime on the victim.
9. The Victim Impact Report states this crime has adversely affected the Complainant emotionally and psychologically. According to the Victim Impact Report, this crime has shattered her self-confidence, making her a withdrawn person. She had been treated negatively, including by her mother, for reporting this crime. Therefore, I find the level of harm in this offence is significantly high.
10. You had opportunistically exploited the situation, where you found the Complainant was alone with your other younger sister to execute these crimes against her. I accordingly find that the level of culpability is exceedingly high in this crime.
11. Considering the serious nature of these offences, the purpose of the sentence, the level of harm and the level of culpability, I select fourteen (14) years as the starting point.
12. You are the eldest of six siblings and were entrusted to look after your younger sisters while your mother was at work. However, you had other plans instead of providing her security. You had abused that trust and confidence the Complainant had in you as her eldest brother. The age difference between you and the Complainant is substantially high. You have exposed this child Complainant to sexual activities by committing this crime at a very young age while destroying her childhood. I consider these reasons as aggravating factors of this offence.
13. In the mitigation submissions, the learned Counsel for the Defence submitted your personal and family background, which has no mitigatory value.
14. The learned Counsel for the Defence submitted that you are a first offender; hence, you are entitled to a substantive discount. I find that your previous good character, especially since you have not been tainted with any prior conviction for an offence of sexual nature, would

have allowed you to move around in society without any suspicion of risk. Your family, especially your mother, had perceived you as a man of good character, not a child paedophile, and entrusted you with the responsibility of looking after your younger siblings. Moreover, there is no suggestion that you have significantly contributed to the community or have any reputation in the community as per Section 5 of the Sentencing and Penalties Act. Therefore, I do not find your previous good character has any significant mitigatory value. Hence, you are only entitled to a meagre discount for your previous good character.

15. In view of the reasons discussed above, I increased further by three (3) years for the aggravating factors to reach seventeen (17) years. Because of your previous character, I reduced one (01) year. Accordingly, I reached sixteen (16) years of imprisonment as your final sentence.
16. Having considered the seriousness of this crime, the purpose of this sentence, and opportunities for rehabilitation, I find fourteen (14) years of the non-parole period would serve the purpose of this sentence. Hence, you are not eligible for parole for fourteen (14) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.

Head Sentence

17. Accordingly, I sentence you to a period of sixteen (16) years imprisonment as an aggregate sentence for one count of Sexual Assault, contrary to section 210 (1) (a) of the Crimes Act and one count of Rape, contrary to section 207 (1) (2) (a) and (3) of the Crimes Act. Moreover, you are not entitled to parole for fourteen (14) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.

Actual Period of the Sentence

18. You have been in remand custody for this case for nearly ninety (90) days before the sentence, as the Court did not grant you bail. Pursuant to Section 24 of the Sentencing and

Penalties Act, I consider three (03) months as a period of imprisonment you have already served.

19. Accordingly, the actual sentencing period is **fifteen (15) years and nine (09) months** imprisonment with a non-parole period of **thirteen (13) years and nine (09) months**.
20. Since this incident involves domestic violence, I am satisfied that there are sufficient grounds to consider making an order under the Domestic Violence Act. I accordingly make a Permanent Domestic Violence Restraining Order against you with standard non-molestation conditions and no contact conditions pursuant to Sections 24 and 28 of the Domestic Violence Act. The above Domestic Violence Restraining Order will be in force until this Court or any other competent Court is varied or suspended. Furthermore, if you breached this restraining order, you will be charged and prosecuted for an offence pursuant to section 77 of the Domestic Violence Act.
21. Thirty (30) days to appeal to the Fiji Court of Appeal.



Hon. Mr. Justice R.D.R.T. Rajasinghe

At Suva

19th October 2022

Solicitors

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for the Accused.